IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26-10-2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.44030 of 2002

V.Balakrishnan ... Petitioner

vs.

1. State of Tamil Nadu rep. by
the Secretary to Government,
Home Department, Fort St. George, Chennai - 9.

2. The Inspector General of Prisons
Egmore, Chennai - 8.

3. The Superintendent
Central Prison, Vellore.

4. The Registrar
Tamil Nadu Administrative Tribunal,
Chennai. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records relating to the order in O.A.No.2971 of 2002, dated 12.06.2002 passed by the fourth respondent herein and quash the same and further to direct the respondents to reinstate the petitioner in service with backwages, continuity of service and other consequential benefits.

For Petitioner : Mr.K.Vasudevan
For Respondents : Mr.K.Balakrishnan, AGP (W)

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O R D E R

S.TAMILVANAN, J

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 12.06.2002 made in O.A.No.2971 of 2002, the applicant therein has come forward with this writ petition, seeking an order of certiorari to call for the records and quash the impugned order and also for necessary direction to reinstate him in service with all monetary benefits.

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2. It has been admitted that the petitioner herein was initially appointed as Gr.II Warder in Central Prison, Vellore in the Jail Department, during 1972 and he was promoted as Gr. I Warder in the year 1983. While he was working as Gr. I Warder in the Central Prison, Vellore, during the intervening night of 15/16.11.1991, 8 prisoners, who were all life convicts, lodged in the Central Prison, Vellore, in the sixth block had escaped from the prison. In connection with the jail break, the petitioner herein and other officials, responsible for the occurrence were dealt with under Rule 17 (b) of the Tamil Nadu Civil Services (D&A) Rules. As per the charge memo, dated 21.03.1992, the petitioner was accused of negligence and dereliction of duty. It is not in dispute that during the aforesaid night hours, when the life convicts escaped from the prison, the petitioner was on para duty from midnight 12.00 to early morning 3.00 a.m. Subsequently, enquiry was held by the Deputy Inspector General of prison, Madurai, witnesses were examined and the enquiry officer concluded his finding that the charge framed against the petitioner has been proved.

3. The Second respondent, accepting the findings given by the enquiry officer, passed an order of dismissal against the petitioner and few other similarly placed delinquent officials, after providing opportunity to raise their defence. Aggrieved by the said order, the petitioner preferred O.A.No.4022 of 1993 before the Tamil Nadu Administrative Tribunal. The Tribunal, by a common order, dated 27.04.1994 allowed the applications filed by the petitioner herein and others, setting aside the orders passed by the respondents and also directed the first respondent therein to reinstate the petitioner herein and few others in service. Aggrieved by which, Special Leave Petitions in S.L.P.Nos.14553 to 14557 of 1994 were filed before the Hon'ble Supreme Court by the respondents herein. Allowing the SLP, the order passed by the Tribunal was set aside by the Hon'ble Apex Court, on the ground that against the orders of Inspector General of Prinsons, an appeal lies to the Government and directed the Government to dispose of the appeal, within the time limit specified therein and also ordered to pay subsistence allowance at the rate of 50% to the petitioner and others. There is no dispute regarding the payment of subsistence allowance made to the petitioner by the respondents 1 to 3.

4. It is seen from the said order of the Hon'ble Apex Court that the same was passed with the consent of the learned counsel for the respondent therein / the petitioner herein. Pursuant to the order passed in the SLP, G.O.Ms.No.1488, Home (Prison - II) Department, dated 04.10.1995 was passed, whereby the orders of the Inspector General of Prison, dismissing the petitioner and others were set aside by the Government and the Inspector General of Prison was directed to initiate denovo enquiry against the petitioner herein and others.

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5. It is seen that in the enquiry, sufficient and reasonable opportunity was afforded to the petitioner and others to cross examine the prosecution witnesses. Based on the evidence, the enquiry officer found the petitioner and others guilty of the charges framed against them. Accepting the enquiry officer's report, Inspector General of Prison imposed punishment of dismissal against the petitioner and few others from service by his order, dated 08.04.1997. Aggrieved by the said order, the petitioner preferred an appeal before the State Government, which was rejected by G.O.Ms.No.1127 dated 16.10.2000. Against the said order, the petitioner preferred O.A.No.2971 of 2002 before the Tamil Nadu Administrative Tribunal, Chennai. The Tribunal considering the evidence and other materials available on record, has dismissed the application. Aggrieved by which, the petitioner has preferred this writ petition.

6. Mr. K.Vasudevan, learned counsel appearing for the petitioner herein contended that the Tribunal has not considered the length of service of the petitioner, while dismissing the application and contented that principles of natural justice was not followed by the respondents 1 to 3. According to him, the punishment of removal of the petitioner from service is too harsh and disproportionate to the charges leveled against him.

7. It is not in dispute that on 15/16.11.1991, 8 prisoners, all life convicts, who had been lodged in the Central Prison, Vellore in the sixth block escaped from the prison. In connection with the jail break, the petitioner herein and others were all dealt with under Rule 17 (b) of Tamil Nadu Civil Services (D&A) Rules. Admittedly, the petitioner was on duty as Gr.I Warder in the aforesaid block of the Central Prison, Vellore, at the relevant time. Therefore, it cannot be said that there is no specific charge framed against the petitioner. As contended by the learned Additional Government Pleader, allowing 8 life convicts to escape from the Central Prison cannot be taken so lightly. Had the officials responsible for guarding the persons been diligent in discharging their duty, the life convicts could not have escaped from the prison. The Officials of the prison, including the petitioner, who were responsible to guard the life convicts in the block of the prison were grossly negligent in discharging their duty, hence, it can be construed as dereliction of duty.

8. Learned counsel appearing for the petitioner would contend that certain other officials were given lesser punishment, whereas the petitioner was given capital punishment of removal from service. But it is seen from the materials placed on record and the enquiry report that similarly placed four officials, who were entrusted with the primary duty of guarding the aforesaid prisoners were all removed from service, considering their gravity of negligence and dereliction of duty.

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9. It is seen from the findings, based on the evidence, that on the night of 15/16.11.1991, 8 life convicts, including two srilankans, by removing the tiles of the roof of Block No.6 making a gapping man-hole on the ceiling and latter jumped out through that hole made on the roofing of the toilet in the prison and they went to the space just opposite to the sixth block, pulled out casuarina posts from a nearby shed, making use of a tennicoit net from one of the unused cells, made a ladder, went to the perimeter wall, climbed up through the ladder one by one on the perimeter wall and jumped down through the ladder out side and escaped from the prison, said to be well guarded. It is quite clear that the occurrence could not have taken place suddenly, at the mid night on 15/16.11.1991. The sequence of the events would show that the life convicts had pre-planned everything and also executed the same due to the gross negligence and dereliction of duty committed by the prison officials, who were primarily responsible to guard the prisoners, at the sixth block of the Central Prison, Vellore.

10. It is a settled proposition of law that in a writ petition, unless there is manifest error of law or perverse finding, leading to miscarriage of justice, this Court cannot interfere with the impugned order passed by the Tribunal. In such circumstances, the punishment imposed on the petitioner, who was one of the primarily responsible officials, by removing him from service, would not be construed as too harsh or disproportionate to the charges leveled against him.

11. On the facts and circumstances, we are of the considered view that there is no error or infirmity in the impugned order passed by the Administrative Tribunal, so as to warrant any interference by this Court, under Article 226 of the Constitution of India and therefore, the writ petition fails.

12. In the result, this writ petition is dismissed. No order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
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   Home Department,
   Fort St. George, Chennai - 9.

2. The Inspector General of Prisons
   Egmore, Chennai - 8.

3. The Superintendent
   Central Prison, Vellore.

1 cc To Mr.K.Vasudevan, Advocate, SR.62484.

W.P.No.44030 of 2002

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